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09/752,015	12/29/2000	Peter Perthou	08914-009001	1179
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FISH & RICHARDSON PC P.O. BOX 1022 MINNEAPOLIS, MN 55440-1022			BARRETT, SUZANNE LALE DINO	
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/752,015
Filing Date: December 29, 2000
Appellant(s): PERTHOU, PETER

MAILED
NOV 27 2006
GROUP 3600

Charles Hieken
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 9/19/06 appealing from the Office action
mailed 11/14/05.

(1) Real Party in Interest

It is assumed that Peter Perthou is the real party in interest.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is substantially correct.

Claims 1-11 are rejected. This appeal involves claims 1-11.

(Note: see new attachment of claim 1 - omitted in claims appendix)

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

A substantially correct copy of appealed claims appears on pages 1-2 of the Appendix to the appellant's brief. The minor errors are as follows: Claim 1 has inadvertently been omitted and is attached to this Examiner's Answer.

(8) Evidence Relied Upon

D435,720	PERTHOU	1-2001
5,069,050	CHEN	12-1991
4,903,514	JUNG	2-1990
4,523,443	MOMEMERS	6-1985
4,601,185	SHELDON	7-1986
1,704,137	MILLER	3-1929

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 1-11 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over the claim of U.S. Design Patent No. D435,720. Although the conflicting claims are not identical, they are not patentably distinct from each other because the design patent clearly shows all of the claimed structure of the instant utility patent application and the utility patent claims all of the structure shown in the design patent as evidenced by the identical drawings figures in both the utility application and the design patent. Accordingly, two-way obviousness determination is satisfied.

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2. Claims 1,6,11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen 5,069,050 in view of Jung 4,903,514, and Momemers 4,523,443 or Sheldon 4,601,185. Chen teaches a flexible web band member 16 having a key ring 12 attached to one end. Jung teaches a keyholder comprising an intermediate member between the member 11 and key ring 15 in the form of a D-ring having a "V" shaped portion connecting one end of the band and the key ring. The D-ring further comprises a gap portion to be attached to the band and a clip means 20/21/22 to clamp the other end of the band together. Jung fails to teach a D-ring having a "U" shaped portion. Momemers teaches a similar key ring comprising a D-ring with a "U" shaped portion 3. Or alternatively, Sheldon teaches both "V" and "U"-shaped rings in Figure 2. It would have been considered an obvious matter of design choice to one of ordinary skill in the art to provide an intermediate member between the band and key ring of Chen as taught by Jung since it well known in the key ring art to provide as many intermediate members as desired due to the ease of attaching multiple rings together, and further to substitute a "U" shape for the "V" shaped D-ring of Jung since the varying shapes of rings are well known and there is no criticality afforded the U-shape. Furthermore, the method limitations of claim 11 are considered inherent to the device of Chen, as modified by Jung, and Momemers or Sheldon.

3. Claims 2-5,7-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen in view of Jung and Momemers or Sheldon, as applied to claim 1 above, and further in view of Miller 1,704,137. Chen fails to teach the ends of the band being joined together as set forth in claim 2. Miller teaches a band 12/14 looped through a key ring

20, fastened along most of its sides by snaps 28 or alternatively by stitching 30, and joined at its ends by a clamp means comprised of stitching 16/30 extending along the entire width of the band. It would have been obvious to one of ordinary skill in the art to modify the band of Chen by providing a fastening along most of its length and stitch clamp means for joining the ends as taught by Miller as a well known alternative manner of constructing the band member and providing strengthening means by doubling up on most of the length, rather than the shortened leg 18D, 18E of Chen.

(10) Response to Argument

Firstly, with respect to Applicant's arguments regarding the double patenting rejection, it is maintained that the drawing figure shown and claimed in design patent D435,720 covers the structure set forth in the claims of the instant application, and therefor, the two-way obviousness determination is satisfied. Applicant's arguments that the instant claim is broader does not overcome the rejection, since the structure of claim 1 is clearly shown in the drawings (and therefore claimed) in the design patent. Applicant has not claimed any limitation which is not shown in the drawings such as a particular material, flexibility, etc, which would overcome the rejection.

Furthermore, as previously discussed, the Chen '050 reference is applied against the claims as the primary reference teaching a flexible band and a key ring. It is well known in the keyholder art that multiple rings may be attached in series, as desired, to continually add more keys to the keyholder and thus, providing an intermediate member (or several) between the band and the key ring would have been considered obvious to one of ordinary skill in the art in order to accommodate more keys. The suggestion

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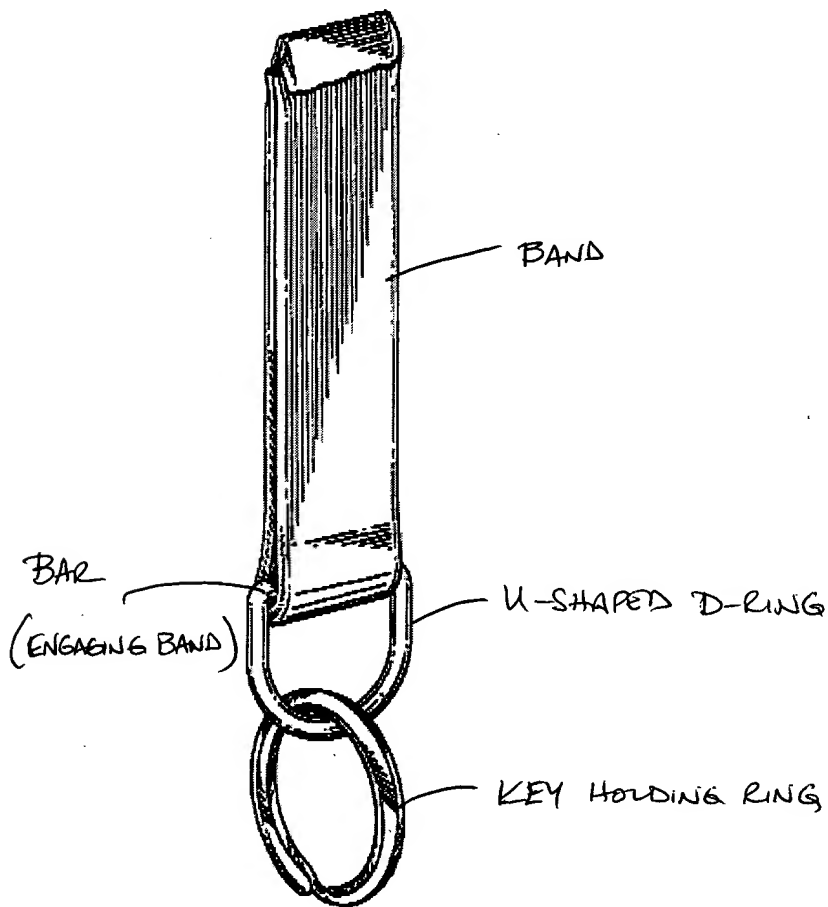
provided in Jung is that intermediate members can be added for mounting additional key rings in order to accommodate more keys. Thus, the conclusion is that given such a teaching, it would have been obvious to provide the keyholder of Chen with an intermediate member for attaching additional key rings. Furthermore, it has been long held that modifying the shape of a structural member, absent a disclosure of criticality of such shape, would have been obvious to one of ordinary skill in the art, especially when the prior art teaches such varying shapes (as evidenced by the cited prior art). Thus, modifying the shape of the intermediate member would have been considered an obvious matter of design choice.

Furthermore, the Miller '137 patent clearly teaches a web band having most of its length fastened together and its ends clamped together and fastened by stitching as discussed above. In addition, Applicant's arguments regarding the method limitations of claim 11 are not persuasive. The assembly of the band, D-ring and key ring would have been considered inherent to the use of the device given the rejection of the structure of the device set forth above. Therefore, Applicant's argument that the Examiner has not provided sufficient motivation to combine these references is not persuasive. It is maintained that the discussion above, clearly sets forth the motivation to combine the elements set forth in Chen, Jung, Miller, Sheldon and Momemers.

With respect to Appellant's specific arguments regarding the double patenting rejection on page 4 of the brief, lines 8-10 particularly, it is maintained that the D435,720 design patent clearly teaches the structure of the claimed invention as recited in the claims. For example in claim 1, the drawing figure 1 of D435,720 (as shown below)

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clearly teaches a key holding ring at the bottom of the device, a band, a D-ring coupling the band to the key holding ring and the D-ring having a U-shaped portion engaging the key holding ring and a bar between the ends of the U-shaped portion and engaging the band. Accordingly, Appellant's arguments are not persuasive.

**FIG. 1**

With respect to the rejection of claims 1,6,11 under 35 U.S.C. 103, Appellant's arguments on page 7 of the brief, first full paragraph, are not persuasive. The Examiner clearly set forth the specific structure in the prior art which corresponds to the claimed

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structure, using reference numerals as shown in the grounds of rejection presented above.

With respect to Appellant's arguments on page 7, second full paragraph, it is maintained that Jung clearly teaches a conventional D-ring 14 having a bar (ends of the D-ring) formed with a gap to allow insertion of the spiral key ring 15.

With respect to Appellant's arguments on page 7, third full paragraph, it is maintained that the combination of references is proper since Jung clearly provides motivation for utilizing multiple rings.

With respect to Appellant's argument on page 8 of the brief regarding the method steps of claim 11, it is maintained that the method steps are inherent to the device taught by the combination of references. Since the prior art references are silent as to the desired assembly of the device, it is left to one of ordinary skill in the art whether an intermediate ring would have been utilized given the teachings of the prior art. The examiner maintains that such a construction would have been obvious to one of ordinary skill in the art.

Appellant's arguments regarding the rejection of claims 2-5,7-10 under 35 USC 103, specifically set forth on page 9, lines 1-8 of the brief, regarding the Miller reference are not persuasive. It is maintained that the Miller reference clearly teaches the use of stitching 16,30 on a band passed through a key ring 20.

With respect to Appellant's argument on page 9, lines 9-10 of the brief, it is maintained that the stitching 16,30 of Miller comprises the clamp.

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With respect to Appellant's arguments on page 9, lines 11-16 of the brief, it is maintained that the stitching 30 (Fig.4) of Miller would have provided teaching such that one of ordinary skill in the art would have stitched together the band in any manner desired, including along most of the length of the web band member.

With respect to Appellant's argument on page 9, lines 17-21 of the brief, it is maintained that Jung clearly teaches a gap in the D-ring 14 to receive the spiral key ring 15.

Accordingly, it is maintained that the prior art of record is properly combinable and teaches the structure and method of the instant claimed invention.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.


For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,


Suzanne Dino Barrett

Conferees:

Brian Glessner 

Dan Stodola 

ATTACHMENT TO EXAMINER'S ANSWER

Applicant : Peter M. Perthou
Serial No. : 09/752,015
Filed : December 29, 2000
Page : 11 of 12

Attorney's Docket No.: 08914-009001

(ix) Claims appendix.

1. A key ring comprising

a key-holding ring,

a band,

a D-ring coupling said band to said key-holding ring,

said D-ring having a U-shaped portion engaging the key-holding ring and a bar between the ends of the U-shaped portion and engaging the band.

2. A key ring in accordance with claim 1 wherein the band is a web of material having ends looped through the D-ring and joined at said ends.

3. A key ring in accordance with claim 2 and further comprising a clamp at the ends of said web of material.

4. A key ring in accordance with claim 2 wherein the web has portions that are fastened together for most of their length to define an opening accommodating the bar of the D-ring so that the D-ring may rotate about the axis of the bar through an angle of nearly 360 degrees and the key-holding ring may ride along the inside portion of the U-shaped portion of the D-ring about an axis perpendicular to the axis of the bar and perpendicular to the band for substantially 180 degrees.

5. A key ring in accordance with claim 3 wherein the clamp width is substantially the same as the width of the band.

6. A key ring in accordance with claim 1 where said key-holding ring is a spiral ring of material having a cross-sectional span with ends and said bar is formed with a gap intermediate said ends of width about that of said span to allow said key-holding ring to pass through said gap into said D-ring during assembly.

7. A key ring in accordance with claim 2 wherein said key-holding ring is a spiral ring of material having a cross-sectional span and said bar has ends and is formed with a gap

intermediate said ends of width about that of said span to allow said key-holding ring to pass through said gap into said D-ring during assembly.

8. A key ring in accordance with claim 3 wherein said key-holding ring is a spiral ring of material having a cross-sectional span and said bar has ends and is formed with a gap intermediate said ends of width about that of said span to allow said key-holding ring to pass through said gap into said D-ring during assembly.

9. A key ring in accordance with claim 4 wherein said key-holding ring is a spiral ring of material having a cross-sectional span and said bar has ends and is formed with a gap intermediate said ends of width about that of said span to allow said key-holding ring to pass through said gap into said D-ring during assembly.

10. A key ring in accordance with claim 5 wherein said key-holding ring is a spiral ring of material having a cross-sectional span and said bar has ends and is formed with a gap intermediate said ends of width about that of said span to allow said key-holding ring to pass through said gap into said D-ring during assembly.

11. A method of making a key ring that includes a key-holding ring that is a spiral ring of material having a cross-sectional span, a band, a D-ring coupling said band to said key-holding ring and having a U-shaped portion engaging the key-holding ring and a bar having bar ends between the ends of the U-shaped portion formed with a gap intermediate said bar ends of width about that of said span to allow said key-holding ring to pass through said gap into said D-ring during assembly, comprising,

passing the key-holding ring through the gap into the D-ring,

and passing the band through the D-ring.